

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

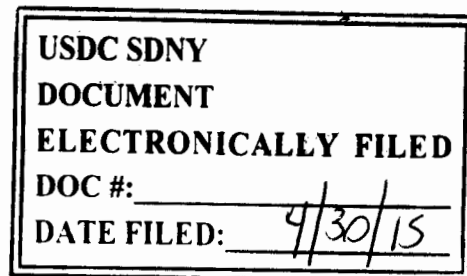
AMERICAN CIVIL LIBERTIES UNION and
THE AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE, including
its components the Office of Legal Counsel
and Office of Information Policy, DEPARTMENT
OF DEFENSE, DEPARTMENT OF STATE,
and CENTRAL INTELLIGENCE AGENCY,

Defendants.



15 CV 1954 (CM)

MEMORANDUM SCHEDULING ORDER

McMahon, J.:


In view of the court's ever-evolving views on how to handle a case of this sort with a modicum of efficiency, I am providing the parties with the following scheduling order:

1. Vaughn Indices of Withheld Documents are due from each of the Responding Agencies (CIA, DOD, DoJ/OLC) on July 17, 2015. I am unmoved by arguments about the burden this imposes on the agencies. These continuing, updated requests for information cannot possibly come as a surprise to the Government, and the exercise of preparing a response should have begun as soon as the complaint was filed.
2. The plaintiffs will provide the court with a brief and exhibits indicating each and every Public Disclosure on which they intend to rely to argue that the Withheld Documents must be disclosed because any otherwise-applicable FOIA exemptions have been waived on August 28, 2015. Please provide the court with a copy of each and every relevant Disclosure, and please highlight the portion of the document that you believe constitutes the Disclosure. It is very time-consuming to search through entire reports or Congressional hearing transcripts in order to figure out what the ACLU deems relevant; in each Public Disclosure please point me to exactly what you think constitutes a waiver.

3. The Government must move for summary judgment by September 30, 2015. The presentation of information by each agency must be made on a document by document basis for each and every document that appears on the Vaughn Index. The Government must comply with the court's orders of January 7, 2015 (Docket 115) and February 24, 2015 (Not Docketed, *see* Docket Entry 118) in the related case captioned *ACLU v Department of Justice*, 12 CV 794 (CM), for the form that the document by document presentation must take; in addition, the Government must go through each of the disclosures referenced in paragraph 2 above and must either explain why the disclosure does not encompass any material in each Withheld Document or must certify that the matters disclosed in each disclosure are not in fact referenced or discussed in each Withheld Document. The Government is free to submit any other affidavits that it believes necessary to establish such matters as proper classification, etc., but each Responding Agency **MUST** submit to this court a document-by-document presentation in the format that the court has found to be helpful – plus the supplementation to address specifically the plaintiffs' Public Disclosures.
4. The ACLU must respond to the motion by October 30, 2015. Since the ACLU will have already provided the court with its list of Public Disclosures, I don't imagine there will be much for plaintiffs to say.
5. The Government must file any reply it deems necessary by November 13, 2015.

We all know that the issue in this case is not going to be whether documents are subject to FOIA exemptions (b)(1), (b)(3) or (b)(5) – all of them likely will be subject to at least one of those exemptions, and quite possibly to all three. I have been at this exercise long enough to know that. The issue is whether the Government has waived its right to rely on those exemptions. I have set long dates (longer than the dates I originally had in mind, which would have had the motions briefed by the end of the summer) and I will not countenance any extensions.

Dated: April 30, 2015



Colleen McMahon, U.S.D.J.

BY ECF TO ALL COUNSEL